

ther. Dato' Marshall submitted that the meaning of the word 'document' in section 4(c) is clear and requires no rule of construction.

In considering the construction to be placed upon the word 'document' the court should not, I think, lose sight of the fact that the Prevention of Corruption Act, 1961 is a penal statute and a person convicted under section 4(c) is liable not only to pecuniary penalty but to a term of imprisonment or to both pecuniary penalty and imprisonment. The court shall, in construing any words in that penal statute upon which a case may be held to fall within, apply the rule of strict construction.

Maxwell's Interpretation of Statutes, 11th edition, p. 253 dealing with construction of penal laws dwelt with the rule which requires that penal statutes shall be construed strictly and adds —

"...it is now recognised that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object."

And at p.254/5, the learned author went on to say as follows —

"But the rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. Where an enactment may entail penal consequences, no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language."

In the instant case, I am inclined to think that apart from the literal meaning that the court should place upon the word 'document' appearing in section 4(c) of the Prevention of Corruption Act, 1961, it is, I think, imperative on the courts to look alone at the words used and the word should not bear the meaning inconsistent with the context in which it was used.

Dato' Marshall further submitted that if the rules of construction are to be invoked other than the golden or literal construction, then the *ejusdem generis* rule may be applied. The learned counsel invited the court's attention to *Craies* on Statute Law, p. 179 where it is stated that —

"This rule of law, generally known as the *ejusdem generis* rule, or the rule *noscitur a sociis*, was thus enunciated by Lord Campbell in *R. v. Edmundson* [(1859) 28 L.J.M.C. 213, 215]: 'I accede,' said he, 'to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.' It is really a question of the assumed intention of the statute."

Mr. Ajaib Singh contended that the *ejusdem generis* rule does not apply. He urged the court to note that in *Hashim v. Public Prosecutor*⁽¹⁾ Azmi C.J. (as he then was) left open the decision whether the words 'other document' in section 4(c) of the Prevention of Corruption Act, 1961 should be interpreted *ejusdem generis* or not. In that case, it is clear that his Lordship left it open because he held that the second part of the document came under the word 'account'.

In the instant case, section 4(c) uses the words 'any receipt, account or other document'. To my mind, a distinct genus is apparent from the words used. The

words 'receipt, account' would seem to possess this character, that is, paper writing dealing with money matters. Thus the words 'other document' I think, should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, for example, bills, cheques, indent, payroll and invoices.

For these reasons, I am of the opinion that for purposes of section 4(c) of the Prevention of Corruption Act, 1961 the words, 'other document' do not include pipe or pipes on which writing or marks are expressed upon them.

After the court had arrived at this decision, Mr. Ajaib Singh intimated that he did not wish to proceed further with the appeal and the appeal was therefore dismissed.

Appeal dismissed

Solicitors: *Allen & Gledhill.*

LIEW CHIN YOONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) November 19, 1970]

[Ipoh — Criminal Appeal No. 51 of 1970]

Criminal Law and Procedure — Report of chemist — Not served on accused — Chemist called to give evidence — Report not rendered admissible merely by producing a copy of it at trial — Criminal Procedure Code (Cap. 6), s. 399.

The accused appealed against his conviction under section 34A of the Road Traffic Ordinance, 1958, for driving in a manner which having regard to the circumstances was dangerous to the public and causing the death of a pillion-rider on a motor-cycle. The main question raised on the appeal was as to the identification of the accused. A witness was called by the prosecution but his evidence was insufficient to identify the accused as being responsible for the running down of the motor-cyclist and his pillion-rider. The prosecution relied on forensic evidence. A senior chemist from the Department of Chemistry was called. He produced his chemist report and then identified the paints taken by him from car AH 2800 and from the motor-cycle.

Held: allowing the appeal, (1) as the report of the chemist had not been served on the accused in accordance with section 399 of the Criminal Procedure Code, it was not admissible and the report could not be made admissible merely by calling the chemist at the trial to produce a copy of the report. The chemist must give oral evidence of his examination and findings using the certificate, if he found it necessary, to refresh his memory;

(2) as the forensic evidence was not available in this case, the case against the accused had not been proved beyond reasonable doubt and the conviction must be quashed.

Cases referred to:-

- (1) *Chong Peng v. Public Prosecutor* [1954] M.L.J. 39.
- (2) *Public Prosecutor v. Ng Fah* [1954] M.L.J. 150.

MAGISTRATE'S CRIMINAL APPEAL.

Chin Fook Yen for the appellant

Haider bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: In this appeal and cross-appeal, the accused appealed against his conviction under section 34A of the Road Traffic Ordinance for driving in a manner which having regard to all the circumstances was dangerous to the public and thereby causing the death of a pillion-rider on a motor-cycle for which he was, *inter alia*, fined \$800 and the Public Prosecutor appealed against the sentence on the grounds of manifest inadequacy.

Suffice it to say, that the driving in a built-up area and in the presence of other traffic was clearly dangerous. It was also a case of a hit and run motorist. In such circumstances clearly the sentence was inadequate so that if the conviction could have been maintained, I would not have any hesitation of imposing a long spell in prison.

The appeal by the accused was urged on me on a variety of grounds, not one of which was, with respect, of any cogency. Cumulatively however they added up to the one submission that the identification of the accused as the driver of the vehicle concerned had not been made with that reasonable certainty that the law required. It might have been more relevant to have concentrated the appeal on this one ground.

As for the evidence for the prosecution, the motor-cyclist carried a pillion-rider who survived to narrate the dangerous manner in which a car knocked him down. He could not identify the motorist or the car. However there was a motorist who was earlier overtaken by a car and who was of sufficient presence of mind to read the registration number of the car in question, though he failed to notice the alphabets before it. He had however seen the driver before. The next morning, he telephoned a mutual friend for the name of this person and this name was in his evidence "a Michael something." He had since forgotten the second name that he was given. What he did with the information was not in evidence but clearly such evidence if given to the police would have been caught by section 113 of the Criminal Procedure Code (Cap. 6). The mutual friend was offered for cross-examination. He affirmed that the car number plate was AH 2800. There are a number of discrepancies between the motorist and his friend, but how material they were the learned president had, with respect, failed to consider. He was however satisfied with the identification of the accused by the motorist.

What this motorist however said in evidence was to the effect that after the car bearing number plate AH 2800 had overtaken him, he noticed two male persons lying on the side of the road on his right. He thought that the driver might have been responsible for the two persons lying on the road and he therefore gave chase to stop the hit and run motorist but failed in the heavy traffic then present. He was confident that the accused was the driver but the significance of the absence of any evidence from this witness identifying the driver of car AH 2800 as the cause of the two persons lying on the side of the road appears to have escaped the attention of everyone. In my view, on the evidence of this motorist alone the prosecution could not be

A said to have raised a *prima facie* case against the accused, which called for his rebuttal.

B The prosecution however relied on forensic evidence. A senior chemist from the Department of Chemistry, Penang, was called. He produced his chemist report and then identified the paints taken by him from car AH 2800 and from the motor-cycle. He was then offered for cross-examination. In cross-examination he identified the paint as similar in respect of colour, texture, number of layers and metallic composition. His evidence in this respect was not shaken at all.

C However, as far as I could find, the report prepared by the senior chemist was never proved to have been served on the accused in accordance with section 399 Criminal Procedure Code, so as to render it admissible: see, *inter alia*, *Chong Peng v. Public Prosecutor*⁽¹⁾ and *Public Prosecutor v. Ng Fah*.⁽²⁾ This failure on the part of the prosecution was perhaps the reason why he was called as a witness. But as a witness, he did not render his report admissible merely by producing a copy of it at the trial. If his report was in the first place inadmissible because of failure to serve it within the stipulated term, it could not be made admissible by the presence of the permitted author of it. Basically, a trial is to be decided on oral evidence, except where by statutory provisions, evidence could be adduced by reports or certificates in writing. Where the chemist is called by the prosecution to furnish the court with the evidence it has failed to adduce by his certificate, he must give oral evidence of his examination and findings, using his certificate, if he should find it necessary, to refresh his memory. This will have the practical effect of adducing in oral evidence what could not be admitted under section 399 of the Criminal Procedure Code. Why this was not done in this particular case I cannot understand but this case is a very good example of good investigation frustrated by inapt prosecution.

G If there had been this forensic evidence that the paint found on the motor-cycle was foreign paint, *i.e.* not from its own coat and that this foreign paint was similar to the original paint of the car, in texture, colour and composition, I would have no hesitation in holding that on this evidence set in the context of the passing motorist's evidence, the accused was guilty of the offence with which he was charged, and I would have sentenced the hit and run motorist to the long term of imprisonment that he deserved. But without this evidence and having regard to the fact which I have held that on scrutiny, the testimony of the passing motorist could not be said to be confidently establishing the accused as being responsible for the running down of the motor-cyclist and his pillion-rider, I do not consider that any court could confidently hold that the case was proved against the accused beyond reasonable doubt. The doubt must therefore be extended to the accused.

I The conviction is quashed and the sentence set aside. There is no point in considering the cross-appeal against sentence.

Appeal allowed. No order on cross-appeal.